

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONT HEARD,

Plaintiff,

No. 17-13904

v.

Honorable Nancy G. Edmunds

YARNICE STRANGE, *et al.*,

Defendants.

/

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION [74]

The matter is currently before the Court on Plaintiff's motion for reconsideration of the Court's opinion and order overruling his objections and accepting and adopting the Magistrate Judge's report and recommendation. (Dkt. 74.) Plaintiff seeks reconsideration of the Court's decision to overrule his first objection and adopt the Magistrate Judge's recommendation that Plaintiff's retaliation claims based on his housing unit transfer be dismissed because he did not exhaust the administrative remedies available to him. (See dkt. 72.)

Under Rule 7.1(h) of the Local Rules for the Eastern District of Michigan, a party may file a motion for reconsideration within fourteen days after a court issues an order to which the party objects. For the motion to succeed, the movant "must not only demonstrate a palpable defect by which the Court and the parties . . . have been misled but also show that correcting the defect will result in a different disposition of the case." E.D. Mich. L.R. 7.1(h)(3). A court generally will not grant a motion for

reconsideration that “merely present[s] the same issues ruled upon by the Court, either expressly or by reasonable implication.” *Id.*

In its opinion, the Court noted that the Michigan Department of Corrections (“MDOC”) grievance policy does not require a grievant to have a grievance identification number to proceed to Step II, and thus Defendants’ failure to respond to Plaintiff’s Step I grievance did not excuse his failure to complete the grievance process before filing suit. (See dkt. 72, PgID 800 (quoting MDOC Policy Directive, 03.02.130(BB) (eff. July 9, 2007)). Plaintiff argues that this finding is based upon a misinterpretation of the applicable grievance policy. In support of his argument, Plaintiff has attached to his motion the MDOC operating procedure that was based upon a version of the grievance policy that is no longer applicable.¹ And even that version of the policy contemplated prison officials’ failure to respond to a prisoner’s Step I grievance and allowed a grievant to request a Step II appeal form “if no response was received, within five business days after the date the response was due, including any extensions.” (See dkt. 74, PgID 814.) Plaintiff does not allege that he requested a Step II appeal form or that he was denied that form.

The Court also noted that Defendants attached to their motion a report of all the grievances Plaintiff had appealed through Step III, indicating he knew how to use the grievance policy. Plaintiff argues that this finding is contrary to *Surles v. Andison*, 678 F.3d 452, 458 (6th Cir. 2012), where the Sixth Circuit noted that a prisoner’s ability to

¹ The operating procedure attached to Plaintiff’s motion is dated December 19, 2003, (dkt. 74, PgID 812), while the version of the directive attached to Defendants’ motion and quoted by the Court is dated July 9, 2007, and indicates it superseded a previous version of the policy, (dkt. 43-3, PgID 556).

file some grievances does not mean he was able to file all relevant grievances. However, in that case, the prisoner had alleged that he was prevented from utilizing the grievance procedure. See *id.* at 457. Here, Plaintiff makes no similar allegation, as was noted by both the Magistrate Judge and this Court. (See dkt. 72, PgID 800.)

In sum, Plaintiff has failed to demonstrate a palpable defect by which the Court and the parties have been misled. Therefore, his motion for reconsideration is DENIED.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: August 20, 2019

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 20, 2019, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager